Supreme Court, U.S.
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No. _____

In the
Supreme Court of the United States
October Term, 1998

Joseph Noel Sykes,

Petitioner,

v.

State of Minnesota,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

MARK W. PETERSON (#86125)
Counsel of Record
Suite 900
520 Marquette Avenue
Minneapolis, Minnesota 55402
(612) 349-5202

Attorney for Petitioner

1998 – Bachman Legal Printing ■ (612) 339-9518 ■ 1-800-715-3582 ■ Fax (612) 337-8053

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QUESTION PRESENTED

Under the Sixth Amendment of the United States Constitution, does a state court have jurisdiction to try an accused where all of the acts constituting the essential elements of the crimes charged took place outside the state?

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Petitioner Joseph Noel Sykes petitions for a writ of certiorari to review the judgment of the Minnesota Court of Appeals in this case.

OPINION BELOW

The opinion of the Minnesota Court of Appeals (Appendix A-1 - A-15) is reported at 578 N.W.2d 807.

JURISDICTION

The judgment of the Minnesota Court of Appeals (Appendix B-1) was entered on August 3, 1998. Petitioner sought review by the Minnesota Supreme Court by petition dated June 23, 1998 (Appendix C-1 - C-7). By Order dated July 16, 1998, the Minnesota Supreme Court denied the petition for discretionary review (Appendix D-1). The jurisdiction of this Court is invoked under 28 U.S.C. §1257.

CONSTITUTIONAL PROVISION INVOLVED

Amendment VI: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

STATEMENT OF THE CASE

Petitioner Joseph Noel Sykes is an English law student and a 13-year former member of the Eckankar church, a

religious organization headquartered in Chanhassen, Carver County, Minnesota.

On September 19, 1995, Sykes was charged in Carver County District Court with six counts of terroristic threats in violation of Minn. Stat. §609.713, subd. 1 (1966) (Complaint, Appendix E-1 - E-10), which provides in pertinent part as follows:

> Whoever threatens, directly or indirectly, to commit any crime of violence with purpose to terrorize another . . . or in reckless disregard of the risk of causing such terror or inconvenience may be sentenced . . .

Under well-established Minnesota law, there are two essential elements of terroristic threats under Minn. Stat. §609.713, subd. 1:

1. Threatening to commit a crime of violence;
2. With intent to terrorize another or in reckless disregard of the risk of causing such terror.

State v. Schweppe, 306 Minn. 395, 237 N.W.2d 609, 613-14 (1975); State v. Fischer, 354 N.W.2d 29, 34 (Minn. App. 1984); State v. Jones, 451 N.W.2d 55, 62-63 (Minn. App. 1990); State v. Murphy, 545 N.W.2d 909, 916 (Minn. 1996). Under this statute, the effect of the defendant's threats to the victim is not an element of the offense. Schweppe, 237 N.W.2d at 614; State v. Marchand, 410 N.W.2d 912, 915 (Minn. App. 1987), pet. for rev. den. (Minn. October 21, 1987).

The Complaint alleges six incidents of threatening conduct by Sykes which took place between January, 1994

and September 7, 1995.[1] None of the acts attributed to Sykes took place within the State of Minnesota and he was not physically present in Minnesota during the time period charged.

Sykes was arrested in California on November 28, 1995, and extradited to Minnesota. On December 22, 1995, Sykes appeared before the Carver County District Court and pled guilty to counts 2 and 5 of the Complaint. Count 2 alleged that on July 10, 1995, Sykes sent a letter to Eckankar's office from England. According to the Complaint, Sykes charged "out-of-body slime attacks" that caused damage to his clothing and further claimed that "his car was forced off the road by sorcery and filled with slime," and closed by stating:

> [t]he pressure I am under from the members of Eckankar you have sent against me is at a level where I am not responsible. If I flip, I will find you, and I will kill you, your wife, that is your second wife, and your pathetic dog. I would enjoy it. No one would defend you.

Count 5 alleged that on July 13, 1994, Sykes called from England and left a threatening telephone message for Douglas Kunin, Eckankar's church counsel, on Eckankar's answering machine in Minnesota. According to the Complaint, the message stated in part as follows:

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[1] In Petitioner's affidavit submitted with his later petition for post-conviction relief (Appendix F), he explained in detail the history of his association with Eckankar, the campaign of terror which they waged against him (Appendix F-5 - F-11), and the intended purpose of his communications to them--to prevent Eckankar from continuing to terrorize him (Appendix F-19 - F-27). We have included Sykes' explanation and justification of his conduct in this Petition to show the unusual factual circumstances in which the jurisdictional issue is raised.

> This is a message for Doug Kunin from Joe Sykes. As [Kunin] may remember, I was a member of Eckankar until one year ago. I left because I'd endured 9 months of the most severe black witchcraft. For one year, I continued to have black witchcraft from a devil who calls himself Peddar Zaskq. I intend to go to America within the next few weeks to murder as many ECKists as I can. And I am putting this on tape for police purposes. At the same time, the FBI and newspapers are going to have full information in detail about all of the witchcraft methods used by members of Eckankar against me.

Sykes pled guilty pursuant to a plea agreement whereby imposition of sentence would be stayed for 10 years on condition that he would immediately depart from the United States, and that he would not return to the United States nor have any contact with Eckankar during the period of probation. The Carver County District Court accepted Sykes' pleas and the plea negotiation. Immediately following the hearing, Sykes returned to England.

On February 26, 1997, Sykes filed a petition for post-conviction relief pursuant to Minn. Stat. §590.01 et seq., seeking dismissal of the charges against him because the state had no jurisdiction over his conduct, or alternatively withdrawal of his guilty pleas based upon lack of voluntariness and lack of factual basis (Appendix F-1 - F-3). Lack of jurisdiction was specifically argued to the post-conviction court,[2] but the post-conviction court summarily found that jurisdiction had been established:

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[2] Memorandum in Support of Petition for Post-Conviction Relief, April 24, 1997 at 2-3; Petitioner's Supplemental Memorandum in Support of Petition for Post-Conviction Relief, May 8, 1997, at 2-4.

> Finally, the State of Minnesota does have jurisdiction over Petitioner's conduct. Under Minn. Stat. §609.025, subd. (3),[3] the State may convict and sentence anyone who, "being without the state, intentionally causes a result within the state prohibited by the criminal laws of this state." As the phone calls were made to and the letter sent to Minnesota, the State may exercise jurisdiction over this matter (Appendix G-5; fn. added).

Sykes also made the jurisdictional argument, on constitutional grounds, to the Minnesota Court of Appeals.[4] The Court of Appeals rejected Sykes' argument on constitutional grounds, relying both on the Minnesota and United States Constitutions (Appendix A-6 - A-9; 578 N.W.2d at 811). The jurisdictional issue was raised in Sykes' Petition for Review of Decision of Court of Appeals (Appendix C-4), but the Minnesota Supreme Court denied review on July 16, 1998 (Appendix D-1).

REASONS FOR GRANTING THE PETITION

Petitioner respectfully maintains that the Minnesota Court of Appeals decided the important federal question of territorial jurisdiction in a way that clearly conflicts with the Sixth Amendment of the United States Constitution, as well as prior relevant decisions of this Court. In order to maintain

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[3] Minn. Stat. §609.025 is Minnesota's extraterritorial jurisdiction statute and provides in pertinent part as follows:

> A person may be convicted and sentenced under the law of this state if the person: * * *
> (3) Being without the state, intentionally causes a result within the state prohibited by the criminal laws of this state.

[4] Appellant's Brief and Appendix, November 26, 1997, at 11-16.

the constitutional limits upon a state's jurisdiction to punish conduct which occurs outside the state, and to prevent jurisdiction from being predicated on conduct which does not constitute an element of the offense, this Court should exercise its discretion to grant certiorari and correct the erroneous decision of the Minnesota Court of Appeals.

The Sixth Amendment of the United States Constitution commands in part that in all criminal prosecutions, an accused has the right to trial "by an impartial jury of the state and district wherein the crime shall have been committed . . ."[5] Long ago, this Court recognized that "a particular state does not have authority to punish a person for acts not performed in that state." Cohens v. Virginia, 19 U.S. 264, 428 (1821) (Marshall, C.J.). In other words, the power of one state to punish individuals for their conduct is limited by the territorial boundaries of a given state:

> Crimes against private individuals or their property, like assaults, murders . . . [and other offenses] which affect the peace and good order of the community must, of course, be committed within the territorial jurisdiction of the government where it may properly exercise it.

United States v. Bowman, 260 U.S. 94, 98 (1922). Therefore, under the Constitution, it is impermissible to try a defendant in one jurisdiction where the charging document shows that the offense was not committed in that jurisdiction. Salinger v. Loisel, 265 U.S. 224, 242 (1924); Travis v. United States, 364 U.S. 631, 634 (1961). This Petition seeks application of these

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[5] The Sixth Amendment is to be distinguished from the constitutional provision on venue, Article III, Section 2, Clause 3, which provides that criminal trials "shall be held in the state where the said crimes shall have been committed . . ." See also, Federal Rule of Criminal Procedure 18.

long and well-established constitutional principles to the erroneous decision of the Minnesota Court of Appeals.

The Minnesota Court of Appeals specifically recognized the language of the Sixth Amendment, and stated that

> [t]o withstand constitutional attack under the Minnesota and United States Constitutions, "some part of the crime charged must be 'committed' within the jurisdiction." (Appendix A-7; 578 N.W.2d at 811).

However, despite recognizing the constitutional requirement necessary to establish jurisdiction, the Minnesota Court of Appeals still found that some part of the crime of terroristic threats was committed within the State of Minnesota because

> the crime of making terroristic threats was complete when Sykes's threats were received by the victims in Minnesota. At that point, a significant part of the situs of the crime was within Minnesota's territorial boundaries. We conclude that because Sykes's threats were received within the territorial boundaries of Minnesota, "some part of the charged offense" was committed within Minnesota. (Appendix A-9; 578 N.W.2d at 812).

Petitioner respectfully submits that the Minnesota Court of Appeals was mistaken and their ruling clearly at odds with constitutional precedent in this Court, in that under clearly established Minnesota case law, the crime of terroristic threats is complete when the threats are made with the requisite mental state. Receipt of the threats by the alleged victims is not necessary to prosecution, as receipt of the threats is not an element of the offense. Therefore, no "part" of the charged offenses was committed within the State of Minnesota

because the receipt of the threats, i.e., the result of the threats, is not "part" of the crime. Jurisdiction cannot be predicated upon facts or a basis which does not constitute an element of the offense.

The Minnesota Court of Appeals decision is clearly at odds with this Court's rulings on the Sixth Amendment which require that a crime be committed within the territorial boundaries of a state for that state to have jurisdiction over a defendant. Simply stated, where Sykes committed no act within the State of Minnesota, and where the result of his actions does not constitute an element of the offense, Minnesota does not have jurisdiction to punish him for commission of those acts.

CONCLUSION

Petitioner respectfully submits that the Court should grant his petition and reverse the decision of the Minnesota Court of Appeals.

Respectfully submitted,

October 14, 1998

MARK W. PETERSON (#86125)
Counsel of Record
Suite 900
520 Marquette Avenue
Minneapolis, MN 55402
(612) 349-5202

Attorney for Petitioner

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STATE OF MINNESOTA
IN COURT OF APPEALS
C1-97-1554

Joseph N. Sykes, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed May 26, 1998
Affirmed
Randall, Judge

Carver County District Court
File No. K1-95-1415

Mark W. Peterson, 2500 One Financial Plaza, 120 South Sixth Street. Minneapolis, MN 55402 (for appellant)

Hubert H. Humphrey III, Attorney General, 1400 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101, and

Michael A. Fahey, Carver County Attorney, Peter A. C. Ivy, Assistant County Attorney, Carver County Justice Center, 600 East Fourth Street, Chaska, MN 55328 (for respondent)

Considered and decided by Willis, Presiding Judge, Randall, Judge, and Klaphake, Judge.

SYLLABUS

1. Jurisdiction of Minnesota district courts is established where any part of the charged offense occurs within the territorial boundaries of the state.

2. Alleged trauma associated with being incarcerated following arrest, by itself, will not support a defendant's claim that he was coerced into accepting a plea. There must be an actual showing that the defendant was induced to plead guilty by the threat of harm or other coercion. The state advising a defendant that it will prosecute fully under the law if there is not a negotiated plea is not coercion. It is simply a restatement by the state of what it has the legal right to do.

3. The postconviction court's finding that defendant's petition for relief was untimely was harmless error on these facts. On the merits of each of defendant's claims, he cannot prevail.

OPINION

RANDALL, Judge

Appellant argues that the postconviction court erred when it denied him relief. Appellant claims that his convictions for felony terroristic threats should be vacated because the district court lacked jurisdiction; that his guilty plea was not made voluntarily, and that there was no factual basis to support his guilty plea. He also claims that his petition for postconviction relief was timely. We affirm.

FACTS

Sykes is an English law student and 13-year former member of Eckankar, a nonprofit cult-like religious organization that has a church in Chanhassen. On September

19, 1995, Sykes was charged in Carver County District Court with six counts of terroristic threats in violation of Minn. Stat. § 609.713, subd. 1 (1996), following six incidents of threatening conduct by him that took place between January 1994 and September 7, 1995. Sykes was arrested in California on November 28, 1995, and extradited to Minnesota.

On December 22, 1995, after consulting with local counsel, Sykes appeared before the district court and pleaded guilty to Counts II and V of the complaint pursuant to a plea agreement. Count II alleged that on July 10, 1995, Sykes sent a letter to Eckankar's Minneapolis office. The letter was posted from England. According to the complaint, Sykes "charged out-of-body slime attacks" that caused damage to his clothing. Sykes "further claimed that his car was forced off the road by sorcery and filled with slime." The letter closed by stating,

> [t]he pressure I am under from the members of Eckankar you have sent against me is at a level where I am not responsible. If I flip, I will find you, and I will kill you, your wife, that is your second wife, and your pathetic dog. I would enjoy it. No one would defend you.

Count V of the complaint alleged that on July 13, 1994, Sykes left a threatening telephone message directed at Douglas Kunin, Eckankar's church counsel, on Eckankar's answering machine in Minnesota. According to the complaint, the message stated, in part, that:

> This is a message for Doug Kunin from Joe Sykes. As [Kunin] may remember, I was a member of Eckankar until one year ago. I left because I'd endured 9 months of the most sever [sic] black

> witchcraft. For one year, I continued to have black witchcraft from a devil who calls himself Peddar Zaskq. I intend to go to America within the next few weeks to murder as many ECKists as I can. And I am putting this on tape for police purposes. At the same time, the FBI and newspapers are going to have full information in detail about all of the witchcraft methods used by members of Eckankar against me."

The call was made from England.

By the terms of the plea agreement, imposition of sentence would be stayed for 10 years on the condition that Sykes would immediately depart from the United States; he would have no contact with Eckankar; and he would not return to the United States during the period of probation. During the plea hearing, Sykes testified that: (1) he sent the letter and left the telephone message; (2) the communications originated from England; (3) the letter and the message could have caused fear in the mind of those receiving the communications; (4) both were sent in reckless disregard of that possibility; and (5) both would have some effect on the person receiving them. As part of the plea agreement, Sykes acknowledged that his guilty pleas were made knowingly and voluntarily and that he was waiving his right to a trial. The district court accepted Sykes's plea and imposed sentence in accordance with the plea negotiation. Following the hearing, Sykes immediately boarded a plane for England.

On January 11, 1996, Sykes contacted Minnesota attorney Joseph Marshall, requesting that Marshall represent him in an action to vacate his convictions. Sykes had recently found out that these Minnesota convictions could be an impediment to his admission to the English bar. On February 12, Marshall declined the representation. By letter dated February 19, Sykes attempted to persuade Marshall to accept

his case. Marshall again declined the representation. Eventually, Sykes obtained his present counsel.

Before filing his petition for postconviction relief, Sykes contacted the Carver County Attorney's office, requesting that the Carver County Attorney stipulate to the vacation of the pleas, judgment, and sentence. Sykes explained to Carver County that he was applying for admission to the English bar and that the Minnesota criminal convictions were an impediment. The Carver County Attorney's office declined, indicating that Sykes's criminal record was a point to be properly considered by the English authorities and the reason offered by Sykes did not justify vacating his plea and convictions.

On February 26, 1997, Sykes filed a petition for postconviction relief, seeking to vacate the pleas, judgment, and sentence. Following a hearing on the matter, the postconviction court denied Sykes's petition. The postconviction court found that the state had jurisdiction over the charged offenses, that there was an adequate basis for Sykes's guilty plea, and that Sykes knowingly and voluntarily waived his right to trial after consulting with private counsel. The court further found that Sykes's petition for postconviction relief was not timely because it was filed 13 months after the entry of judgment. The postconviction court did consider the substantive merits of Sykes's claim as an alternative basis to deny relief. This appeal follows.

ISSUES

1. Does the State of Minnesota have jurisdiction over the charged offenses?
2. Were Sykes's guilty pleas made voluntarily?
3. Is there an adequate factual basis to support the guilty pleas?
4. Is Sykes's petition for postconviction relief timely?

ANALYSIS

An appellate court reviews a postconviction proceeding to determine whether the postconviction court's findings are supported by sufficient evidence. ***Roby v. State***, 531 N.W.2d 482, 483 (Minn. 1995). A postconviction court's decision will not be disturbed absent an abuse of discretion. ***Id.***

I.

Sykes argues there was no "operative event" that took place within Minnesota that could constitute the essential elements of the crime of making terroristic threats. Thus, he argues that the district court lacked jurisdiction over the charged offenses. Principally, Sykes argues that neither the result nor the effect of his conduct on the victims constitutes an element of terroristic threats. Rather, he argues that both the result and the effect are merely circumstantial evidence relevant to the element of intent. Thus, he argues that result and effect cannot be used to establish jurisdiction. Sykes points out that the district court found jurisdiction to try the charged offenses because the phone calls were received in Minnesota and the letter was sent into Minnesota and received. Sykes argues that the district court erred because, according to Sykes, the crime, if any, was completed on English soil and thus, Minnesota has no jurisdiction.

On appeal, this court reviews jurisdictional questions de novo. ***State v. LaRose***, 543 N.W.2d 426, 427 (Minn. App. 1996). "At common law the criminal jurisdiction of state courts was limited to crimes committed within the territorial boundaries of the state." ***State v. McCormick***, 273 N.W.2d 624, 625 (Minn. 1978). Extraterritorial jurisdiction for Minnesota courts to hear and try criminal offenses has been

expanded by Minn. Stat. § 609.025 (1996). This section provides in relevant part that:

> A person may be convicted and sentenced under the law of this state if the person:
>
> * * * *
>
> (3) Being without the state, *intentionally causes a result within the state prohibited by the criminal laws of this state.*

Minn. Stat. § 609.025, subd. 3 (emphasis added).

Both the Minnesota and United States Constitutions embody the concept of territoriality. Article I, section 6 of the Minnesota Constitution provides the right to a trial in "the county or district wherein the crime shall have been committed, which county or district shall have been previously ascertained by law." The Sixth Amendment to the United States Constitution establishes the right to a trial in "the state and district wherein the crime shall have been committed." To withstand constitutional attack under the Minnesota and United States Constitutions, "some part of the crime charged must be 'committed' within the jurisdiction." ***State v. Smith***, 421 N.W.2d 315, 319 (Minn. 1988). For a district court in Minnesota to have jurisdiction in this case, some part of the offense of terroristic threats had to be committed within the territorial boundaries of Minnesota.

The terroristic threat statute, under which Sykes was charged, provides that an individual is guilty of a felony if he or she

> threatens, directly or indirectly, to commit any crime of violence with purpose to terrorize another or * * * to cause serious public inconvenience, or in a reckless disregard of the risk of causing such terror or inconvenience * * *.

Minn. Stat. § 609.713, subd. 1 (1996). This section requires that the "defendant utter the threat with the purpose of terrorizing another." ***State v. Schweppe,*** 306 Minn. 395, 400, 237 N.W.2d 609, 614 (1975). "Purpose in this context means aim, objective, or intention [and] terrorize means to cause extreme fear by use of violence or threats." ***Id.*** (citations omitted). The effect of a terroristic threat is not an essential element of the offense, but the victim's reaction to the threat is circumstantial evidence relevant to the element of intent. ***Id.*** at 401, 237 N.W.2d at 614. "Intent * * * is a subjective state of mind usually established only by reasonable inference from surrounding circumstances." ***Id.***

When Sykes composed the threatening letter and made the telephone call from England, he intended those threats to reach victims within the territorial boundaries of Minnesota. Sykes accomplished that. Had Sykes not communicated his threats to his intended victims, he could not have been charged with making terroristic threats in Minnesota. For instance, assume that he drafted a letter, but then never sent it. Or assume that he wrote a threatening letter, but it got lost in the mail in England and was never received. In those hypothetical situations, Sykes would have an arguable defense, both on the merits and on the issue of whether Minnesota had jurisdiction. An individual cannot be guilty of making terroristic threats if the threat of violence is not communicated to the intended victim. ***See id.*** at 400, 237 N.W.2d at 614 (noting speaker cannot intentionally commit crime of terrorizing another if threat is uttered in circumstances where he does not know or have reason to know it will be communicated to victim). A threat that is not communicated to an intended victim is generally an idle threat. But that is not our case. Sykes readily concedes that the phone call and the letter were communicated in Minnesota to the people he wanted to communicate with.

Put another way, Sykes argues that a person residing (for instance) in England or Canada or Mexico can mail or call in threats to people within the boundaries of one of America's 50 states, and can never be prosecuted for terroristic threats in that state even if they are later properly apprehended in the United States, as Sykes was here. Sykes argues weakly that only the country of origin of the threats has jurisdiction to charge a crime and that if they do not, the state where the victim receives the threats can never have an interest or jurisdiction. Sykes cites no specific Minnesota law. We consider the argument to be without merit.

The supreme court's decision in ***State v. Rossbach***, 288 N.W.2d 714 (Minn. 1980), is on point. In that case, defendant fired a number of shots with a high powered rifle from inside the Red Lake Indian Reservation at a deputy sheriff standing in Clearwater County after the deputy had just arrested defendant's acquaintance on a felony warrant. ***Id.*** at 715. Defendant argued that the offenses occurred on Indian land and therefore the state did not have jurisdiction. ***Id.*** The supreme court rejected defendant's argument, holding that "[b]ecause the situs of the crime occurred within Minnesota, the state has jurisdiction." ***Id.***; ***cf. Smith***, 421 N.W.2d at 320-21 (holding jurisdiction lacking where state failed to prove any part of crime occurred within state).

Here, the crime of making terroristic threats was complete when Sykes's threats were received by the victims in Minnesota. At that point, a significant part of the situs of the crime was within Minnesota's territorial boundaries. We conclude that because Sykes's threats were received within the territorial boundaries of Minnesota, "some part of the charged offense" was committed within Minnesota. The postconviction court did not abuse its discretion when it ruled that the district court properly exercised jurisdiction over the charged offenses.

II.

Sykes claims that he was coerced into pleading guilty and argues that this court should order the withdrawal of his guilty pleas because they were not made voluntarily. We disagree.

For a guilty plea to be valid, "it must be accurate, voluntary, and intelligent (i.e., knowingly and understandingly made)." ***Perkins v. State***, 559 N.W.2d 678, 688 (Minn. 1997). The "'involuntariness of a guilty plea * * * constitute[s] such a manifest injustice as to entitle a defendant to withdraw his plea.'" ***State v. Danh***, 516 N.W.2d 539, 544 (Minn. 1994) (quoting ***Hirt v. State***, 298 Minn. 553, 558, 214 N.W.2d 778, 782 (1974)). Whether a plea is made voluntarily is a question of fact that will not be disturbed unless clearly erroneous. ***Id.*** Findings of fact are not clearly erroneous if they are supported by reasonable evidence in the record. ***Id.*** All the relevant circumstances must be considered when determining the voluntariness of a plea. ***Id.***

During the plea hearing, Sykes testified that he understood that: (1) he was pleading guilty and that such plea was voluntary; (2) by pleading guilty, he was not entitled to a trial; (3) by pleading guilty he was not entitled to the presumption of innocence or the requirement that the state prove his guilt beyond a reasonable doubt; (4) he was foregoing the right to remain silent, to cross-examine the state's witnesses, and to call witnesses on his behalf, including the ability to subpoena witnesses located within the state; and (5) the plea petition was signed voluntarily and that he understood all the rights waived by the petition.

Now on appeal, Sykes claims that he was forced to plead guilty because: (1) he was foreigner who had never been arrested, was unprepared for it, and "was emotionally distraught" because of his incarceration; (2) he was frightened by his perception that the state intended to seek the most severe penalties if he did not plead guilty and because he

believed the state intended to use false information against him; (3) his English barrister would provide funds for his Minnesota counsel's representation only on the condition that he plead guilty; and (4) his family wanted him home for Christmas, and if he pleaded guilty he would be home in time for Christmas.

We take each of appellant's claims in turn. First, the normal trauma associated with being incarcerated following an arrest is not, by itself, a basis to claim coercion. There must be something in addition, such as a showing that the state actually induced the defendant to plead guilty "through actual or threatened physical harm, or by mental coercion 'overbearing the will of the defendant.'" ***State v. Ecker***, 524 N.W.2d 712, 719 (Minn. 1994) (holding state may not procure guilty plea by actual or threatened use of physical harm or mental coercion overcoming the will of defendant) (quoting ***Brady v. United States***, 397 U. S. 742, 750, 90 S. Ct. 1463, 1470 (1970)). There is no evidence in the record to suggest that the state threatened Sykes with physical harm or that he was subjected to mental coercion.

Likewise, there is nothing improper about the statement by the state that it would fully prosecute him for the charges if there was not a plea agreement. ***See id.*** (holding threat to prosecute defendant fully if defendant does not plead guilty is constitutionally permissible). All the state was doing was pointing out its legal authority to prosecute defendants who plead not guilty and go through trial.

Sykes expressly states in his brief that he is making no claim that he received ineffective assistance of counsel by his Minnesota attorney, Bruce Hanley. The record easily supports Hanley's competent representation. The record establishes that Hanley had been in communication with Sykes over a good part of the week, including a two-hour meeting with Sykes on Wednesday evening. Sykes admits that Hanley discussed his case with him, including what Sykes's goals and

desires were. Sykes concedes that he was satisfied with the resolution of his case until he found out about his problem with admission to the English bar.

The district court properly concluded that Hanley discussed the plea offer with Sykes, including criminal procedure and possible defenses. There are no facts in the record indicating that Sykes pleaded guilty because of any ignorance of the law or the facts.

Similarly, there is no support for Sykes's argument that he was coerced into agreeing to plead guilty because his English barrister, Martin Bowdery, would provide funds for his representation by a Minnesota attorney only on the condition that he plead guilty. According to Bowdery's affidavit, Bowdery informed Sykes that he "could only pay for Mr. Hanley" if Sykes would "cut a deal with the prosecutor" and plead guilty it so that he could leave Minneapolis and return to England without delay." The record is not that clear cut. In his letter to Hanley, Bowdery agreed to pay a retainer of $7,000 on behalf of Sykes and that any expenditure over that required Bowdery's written authority. Bowdery stated that he would speak with Sykes and then, subject to Sykes's instructions, he would retain Hanley "to trial if necessary." Bowdery told Hanley that he advised Sykes that a good outcome would be for Sykes to negotiate a plea with the prosecution, apologize for the threats, and negotiate a deal provided the prosecution agreed to immediately deport him back to England. From the record, it looks like Bowdery gave Sykes competent legal advice, and was prepared to spend further funds if needed.

Sykes got precisely the plea bargain that he wanted. The plea bargain made perfect sense to Sykes at the time. It was only months later, when Sykes learned that he now had a possible impediment to his admission to the English bar, that he decided "his plea was not voluntary." We can sympathize and understand Sykes's position. During his time with

Eckankar, the record shows he experienced as many, or more, problems with them as they did with him. It may be a shame if this incident keeps him from his goal of becoming an attorney in England, but that cannot be cured by hindsight. Sykes got the plea agreement and the sentence that he wanted.

The postconviction court's findings of fact on the issue of the voluntariness of Sykes's guilty pleas are supported by the record.

III.

Sykes argues that his guilty pleas should be withdrawn because there is no factual basis to support the pleas. Sykes claims that the factual basis for guilt is lacking because he was never questioned about his intent or state of mind at the time he sent the letter or made the telephone call and that the contents of the letter and the telephone call were never discussed. Sykes's argument is without merit. The record shows that Sykes's attorney informed him of the nature and elements of the charges against him. Sykes then decided to plead guilty. By deciding to plead guilty, Sykes waived his claim now that "he had no intent." ***See State v. Hemmings***, 371 N.W.2d 44, 46 (Minn. App. 1985) (holding where defendant made tactical decision to plead guilty, "he has waived the defense of lack of intent"). Sykes also knew or should have known that his statements could certainly cause apprehension in the recipients that he might act out and commit a further act of physical violence. ***See State v. Murphy***, 545 N.W.2d 909, 916 (Minn. 1996) (holding defendant's actions constituted threat under terroristic threats statute where actions created "'apprehension that its originator will act according to its tenor' and commit a future act of physical violence") (quoting ***Schweppe***, 306 Minn. at 399, 237 N.W.2d at 613).

The district court could readily infer Sykes's intent to terrorize certain members of Eckankar, even if it was, from

Sykes's point of view, a type of bizarre self-defense. The postconviction court properly concluded that there was an adequate factual basis to support Sykes's guilty pleas.

IV.

Finally, Sykes argues that the postconviction court erred when it concluded that his petition for postconviction relief was not timely filed. We agree.

The record establishes, and the state concedes, that within a month of being sentenced, Sykes attempted to obtain local counsel to challenge his convictions. Sykes had significant difficulty in obtaining local counsel and was able to do so only in March 1996. The record further establishes that the parties attempted to resolve the matter informally before the petition for postconviction relief was filed.

The postconviction court concluded Sykes's petition for postconviction relief was not timely because it was filed over 13 months after the entry of judgment. The postconviction court noted that Minn. R. Crim. P. 15.05, subd. 1 allows postsentence withdrawal of a guilty plea only if the motion is timely. However, as Sykes notes, this action is one for *postconviction* relief under Minnesota Statutes chapter 590 and not a motion to withdraw under Minn. R. Crim. P. 15.05, subd. 1. Timeliness *is not required* by the postconviction statute, although it is a factor to be considered when determining whether relief should be granted. ***See Fox v. State***, 474 N.W.2d 821, 826 (Minn. 1991) (holding "appellant's delay in seeking relief is a relevant consideration in determining whether that relief should be granted").

The postconviction court erred when it concluded that Sykes's petition for postconviction relief was not timely. But the error is harmless because the postconviction court did consider the substantive merits of Sykes's claim, and we

affirm the postconviction court's conclusion that Sykes's rights were not prejudiced.

DECISION

We affirm the postconviction court's conclusion that the district court properly exercised jurisdiction over Sykes. A substantial part of the crime was committed in Minnesota where the threats were received. The situs of the charged offense of terroristic threats was within the territorial boundaries of Minnesota. The postconviction court properly concluded that Sykes's guilty plea was made voluntarily, and properly concluded that there was a sufficient factual basis for the plea.

Despite the erroneous conclusion that Sykes's petition for postconviction relief was untimely, Sykes's substantive claims were fairly considered. We affirm the postconviction court on Sykes's substantive claims on all issues.

Affirmed.

/s/ Randall
May 19, 1998

STATE OF MINNESOTA

☐ **Supreme Court**
☒ **Court Of Appeals**

Joseph N. Sykes, petitioner,

Appellant,

vs.

State of Minnesota,

Respondent.

JUDGMENT

C1-97-1554
Appellate Court Case Number

K1951415
Trial Court Case Number

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the order *of the Court below, herein appealed from, to wit, of the District Court within and for the County of* Carver *be and the same hereby is*
affirmed in accordance with opinion

and that judgment be entered accordingly. A certified copy of the entry of judgment and the Court's decision is herein transmitted and made part of the remittitur.

Dated and signed: FOR THE COURT August 3, 1998
Dated

Attest: *Frederick K. Grittner*
Clerk of the Appellate Courts

By: /s/ Wendy Johnson
Assistant Clerk

STATE OF MINNESOTA
IN SUPREME COURT

Joseph N. Sykes,	)	**PETITION FOR REVIEW**
	)	**OF DECISION OF COURT**
Petitioner,	)	**OF APPEALS**
	)	
vs.	)	Appellate Court Case No.:
	)	C1-97-1554
State of Minnesota,	)	
	)	
Respondent.	)	

* * * * * * * * * * * * * * * *

TO: THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Petitioner, Joseph N. Sykes, requests Supreme Court review of the above-entitled decision of the Court of Appeals upon the following grounds.

STATEMENT OF LEGAL ISSUES

I. Does Minnesota have jurisdiction to prosecute a defendant for terroristic threats, Minn. Stat. §609.713, subd. 1, where the defendant was not present in Minnesota and his threats were not made in Minnesota but they were received in Minnesota?

Court of Appeals held: in the affirmative.

II. Were petitioner's pleas of guilty to terroristic threats voluntary?

Court of Appeals held: in the affirmative.

III. Does the record establish a sufficient factual basis for petitioner's pleas of guilty?

Court of Appeals held: in the affirmative.

STATEMENT OF CRITERIA SUPPORTING PETITION

1. The question of jurisdiction is a constitutional question and it is important for the Supreme Court to establish its limits.

2. The Court of Appeals' decision extends the basis for jurisdiction to conduct which does not constitute an element of the offense, contrary to prior decisions of the Supreme Court.

3. In order to maintain consistency in the law, the Supreme Court should continue to require that some part of an offense take place in Minnesota before the state may exercise jurisdiction.

4. The Court of Appeals misconstrued the facts supporting petitioner's claims that his pleas were involuntary and lacked factual basis.

STATEMENT OF THE CASE

Petitioner seeks review of the Court of Appeals' decision (Appendix A), affirming a judgment of the Carver County District Court denying his petition for post-conviction relief (Appendix B).

Petitioner sought to withdraw his guilty pleas to two counts of terroristic threats, contrary to Minn. Stat. §609.713, subd. 1, on the grounds that the State of Minnesota had no jurisdiction over the offenses charged under Minn. Stat. §609.025, subd. 3, the extraterritorial jurisdiction statute, because no part of the offenses took place within the state. In

the alternative, he maintained that his pleas were not voluntary, and there was no factual basis for guilt. Both lower courts found against petitioner on all grounds.

ARGUMENT

THE COURT OF APPEALS ERRED IN CONCLUDING THAT MINNESOTA HAD JURISDICTION OVER PETITIONER'S CONDUCT WHERE ALL ESSENTIAL ELEMENTS OF THE OFFENSE WERE COMMITTED OUTSIDE THE STATE AND NO PART OF THE OFFENSE WAS COMMITTED WITHIN THE STATE.

The law is clear that there are two essential elements of the crime of terroristic threats: the threats themselves and the requisite mental state (intent or reckless disregard) at the time. State v. Schweppe, 306 Minn. 395, 237 N.W.2d 609, 613-14 (1975); State v. Fischer, 354 N.W.2d 29, 34 (Minn. App. 1984); State v. Jones, 451 N.W.2d 55, 62-63 (Minn. App. 1990); State v. Murphy, 545 N.W.2d 909, 916 (Minn. 1996). Under the statute, the effect of the defendant's threats to the victim is not an element of the offense. Schweppe, 237 N.W.2d at 614; State v. Marchand, 410 N.W.2d 912, 915 (Minn. App. 1987), pet. for rev. den. (Minn. October 21, 1987); Minn. CRIMJIG 13.42. Further, no reported decision holds or states that the threats must be received by the victim.

Despite this well-established precedent, the Court of Appeals found

> the crime of making terroristic threats was complete when Sykes's threats were received by the victims in Minnesota. At that point, a significant part of the situs of the crime was within Minnesota's territorial boundaries. We conclude that because Sykes's threats were received within the territorial

> boundaries of Minnesota, "some part of the charged offense" was committed within Minnesota. (Slip op. at 10)

We respectfully submit that the Court of Appeals was mistaken, in that:

1. The crime of terroristic threats is complete when the threats are made with the requisite mental state;

2. Receipt of the threats by the alleged victims is not necessary to prosecution, as it does not constitute an element of the offense; and

3. No "part" of the charged offense was committed within Minnesota because the receipt of the threats, i.e., the result of the threats, is not "part" of the crime.

Extraterritorial jurisdiction for Minnesota courts is provided by Minn. Stat. §609.025, which provides in pertinent part as follows:

> A person may be convicted and sentenced under the law of this state if the person: * * *
>
> (3) Being without the state, intentionally causes a result within the state prohibited by the criminal laws of this state.

Under this statute, the law is well-established that the state has jurisdiction to punish a crime "only if some part of the crime was committed in Minnesota." State v. McCormick, 273 N.W.2d 624, 628 (Minn. 1978); State v. Rossbach, 288 N.W.2d 714, 715 (Minn. 1980); State v. Smith, 421 N.W.2d 315, 320 (Minn. 1988); State v. Kramer, 441 N.W.2d 502, 507-08 (Minn. 1989). See Minn. Const. Art. I, §6; U.S. Const. Amend. VI and Nielsen v. Oregon, 212 U.S. 315, 321 (1909); Salinger v. Loisel, 265 U.S. 224, 232 (1924). As clearly stated in Smith, op. cit:

> In order to withstand constitutional attack, some operative event, a triggering event if you will, must occur within the jurisdiction for the court to have power to act. The event needed, as required by the Minnesota and United States Constitutions, is that some part of the crime charged must be "committed" within the jurisdiction.

In reaching their decision, the Court of Appeals relied on State v. Rossbach (Slip op. at 9-10); however, the difference between the elements of the offenses there and the elements here strongly supports petitioner's position. Rossbach was convicted of aggravated assault and aggravated criminal damage to property for firing a high powered rifle from Indian country across the borderline of the adjoining county at a deputy sheriff who had just arrested an acquaintance of defendant. Both offenses had as elements their effect upon the victim: physical harm or fear of harm for assault and actual damage to the property involved; unlike terroristic threats, neither of these offenses can be committed without an effect upon the victim. Terroristic threats, however, requires proof of only the threats and the requisite mental state; no effect upon the victim is required at all. Although in the "normal" case, the threats are communicated to the victim and were circumstantial evidence of intent, communication is not a required element. See Schweppe, 237 N.W.2d at 614.

The Court of Appeals also ignored State v. McCormick, 273 N.W.2d 624 (Minn. 1978), where this Court held that a person could not be prosecuted for detaining a child outside the state under Minn. Stat. §609.26, where the statute proscribed criminal conduct occurring outside the State of Minnesota. Although recognizing the expansion of extraterritorial jurisdiction under Minn. Stat. §609.025, the Court held the statute an unconstitutional exercise of

jurisdiction, even though the children in question were removed from Minnesota, in violation of a Minnesota court order. 273 N.W.2d at 628. The Court of Appeals was apparently concerned over the ability to prosecute petitioner for his conduct, but jurisdiction is provided by any number of federal statutes which would apply, the most obvious of which is 18 U.S.C. §2332(b).

CONCLUSION

Controlling case law establishes that Minnesota did not have jurisdiction over petitioner's conduct. Petitioner requests that this Court exercise its jurisdiction to review the decision of the Court of Appeals and vacate his convictions.

Dated this____ day of June, 1998.

Respectfully submitted,

MARK W. PETERSON
Attorney ID No. 86125
Suite 900
88 South Sixth Street
Minneapolis, MN 55402
(612) 349-5202

ATTORNEY FOR PETITIONER

STATE OF MINNESOTA

IN SUPREME COURT

Joseph N. Sykes, Petitioner

Appellant,

vs.

State of Minnesota,

Respondent.

PETITIONER'S APPENDIX

Index to Appendix

A. Court of Appeals decision (May 26, 1998)..... A1-A17

B. Carver County Court Decision
(August 19, 1997) B18-B21

[DOCUMENTS OMITTED AS DUPLICATIVE]

STATE OF MINNESOTA

IN SUPREME COURT

C1-97-1554

Joseph N. Sykes, petitioner,

Appellant,

vs.

State of Minnesota,

Respondent.

ORDER

Based upon all the files, records and proceedings herein, IT IS HEREBY ORDERED that the petition of Joseph N. Sykes for further review be, and the same is, denied.

Dated: July 16, 1998

BY THE COURT:

/s/

Kathleen A. Blatz
Chief Justice

State of Minnesota County of Carver — District Court

CCT	LIST CHARGE STATUTE ONLY	M.O.C.	GOC
1	609.713, S1	A9B00	N
2	609.713, S1	A9B00	N
3	609.713, S1	A9B00	N
4	609.713, S1	A9B00	N
5	609.713, S1	A9B00	N
6	609.713, S1	A9B00	N

CTY. ATTY. FILE NO. | CONTROLLING AGENCY MN0100000 | CONTROL NO. 95005803 95013727

COURT CASE NO. | DATE FILED

Amended | Tab Charge Previously Filed

SERIOUS FELONY | SUMMONS
X FELONY | X WARRANT
GROSS MISDM DWI | ORDER OF DETENTION
GROSS MISDM

State of Minnesota vs. PLAINTIFF,

COPY

NAME: first, middle, last
JOSEPH N. SYKES
BM36
London WC1N3XX, England

Date of Birth 12-14-57

SJIS COMPLAINT NUMBER 10-11-1-005868
CARVER CTY

DEFENDANT.

COMPLAINT

The Complainant, being duly sworn, makes complaint to the above-named Court and states that there is probable cause to believe that the Defendant committed the following offense (s). The complainant states that the following facts establish PROBABLE CAUSE:

Complainant, Ron Holt, states that he is a Captain with the Carver County Sheriff's Department, and in that capacity he has learned the following:

On September 8, 1995, at 09:42 hours, Carver County Deputy Tim Koehler received a call advising him of a "threats received" complaint at the Eckankar Temple (Temple of ECK), 7450 Powers Boulevard, City of Chanhassen, County of Carver, Minnesota. Eckankar is a nonprofit religious organization and church. Eckankar has members in over one hundred countries, and facilities in North America, Europe, Africa, Australia, and Asia. Eckankar's headquarters are in Minneapolis, Minnesota. The Temple of ECK is Eckankar's spiritual home. Deputy Koehler responded to the scene and spoke with Mr. Douglas Kunin, Eckankar's church counsel and Ms. Delaine Georgia Saxby, the receptionist.

Mr. Douglas Kunin stated that on September 7, 1995, at 16:55 hours, the Eckankar receptionist, one Delaine Saxby, received a threatening phone call. Ms. Saxby, who answered the phone with an Eckankar greeting, transcribed the conversation on a computer. She stated that the caller, who spoke with a British accent, made his threat, saying only, "I'm not going to give you my name. I'm being attacked by Harold Klemp on the psychic (?) plane and if it doesn't stop right

now, I'm going to start killing people in ECK next week." Then the caller disconnected.

Although the caller did not identify himself in this call, Mr. Kunin believes that this threat, like others previously reported to the Carver County Sheriff's Department, originates with Joseph N. Sykes, of the address and with the date of birth as indicated above, and hereinafter referred to as the Defendant.

The Defendant ended his 14-year Eckankar membership sometime in 1993. Shortly thereafter, Eckankar began to receive harassing and frightening messages from the Defendant.

On January 7, 1994, a handwritten letter from the Defendant was delivered to a California-based Eckankar member named Paula Jones, c/o Eckankar, in Minneapolis. According to Mr. Kunin, Ms. Jones has neither a close friendship nor relationship with the Defendant.

In his January letter, the Defendant proclaimed, among other things, that Eckankar was witchcraft, that Ms. Jones was a witch, and that Tibetan magicians controlled the group. The Defendant claimed that the spirit of Paul Twitchell was trying to stop him from having relationships with other women. The Defendant further pledged that he would prevent the spirit of Paul Twitchell from arranging marriage between the Defendant and Ms. Jones.

On January 11, 1994, just four days after the date of his letter to Ms. Jones, the Defendant left a recorded homicide threat on the answering machine of an Eckankar center in Burbank, California at 7:18 p.m.. In his message, the Defendant identified himself, gave his reason for the cancellation of his Eckankar membership, alleged and described "attacks" of slime that he claimed were being visited upon him by Eckankar, and again spoke of Tibetan magicians.

Toward the end of his message the Defendant made his threat. He said, "However, I am prepared to do anything necessary; I'm quite prepared to murder one of the ECKists and then go to the press and give full details of what I have done, why I have done it. If I have to spend a few years in prison, frankly it will be better than psychic attacks which go on all day. Now, if the attacks stop within one month, which is the time I'm going to be in America, then I'll take no action."

This message was characterized by the Burbank police as a "terroristic threat" and was reported to the U.S. Immigration and Naturalization Service in Bloomington, Minnesota, the FBI in Los Angeles, California (Mr. Randy Aden, Squad C-1) and the British Police (Technical Investigator, Mr. Adrian Wort, Sheperd's Bush British Police Station, London. Phone 44-081-740-1212).

Mr. Kunin was informed that the British police and social services were already investigating the Defendant as a suspect in a vandalism incident involving the residence of Eckankar members. Further, the Defendant was being investigated for various threatening statements, including a statement that the Defendant had joined a gun club with the intent to "trap and shoot a few ECKists" (members of Eckankar).

On July 13, 1994, the Defendant left another threat on the Eckankar answering machine in Minneapolis. This threat was directed at Mr. Kunin. The Defendant said, "This is a message for Doug Kunin from Joe Sykes. As he may remember, I was a member of Eckankar until one year ago. I left because I'd endured 9 months of the most sever black witchcraft. For one year, I continued to have black witchcraft from a devil who calls himself Peddar Zaskq. I intend to go to America within the next few weeks to murder as many ECKists as I can. And I am putting this on tape for police purposes. At the same time, the FBI and newspapers are

going to have full information in detail about all of the witchcraft methods used by members of Eckankar against me." The message continued with a plea for Mr. Kunin to intercede with on Harold Klemp.

As with the previous threat, Mr. Kunin alerted the FBI in Los Angeles, California and Minneapolis, Minnesota (Violent Crimes Unit file No. 9A-MP-41014), the INS in Bloomington, Minnesota (Officer Botel), and the British police.

On or around April 4, 1995, the Defendant addressed three identical letters to Eckankar; one to the telephonists a second to Mr. Kunin and a third to Mr. J. Kurv (?-name nearly illegible). In each 6-sentence letter, the Defendant professes to have become a born-again Christian. The Defendant asks to be forgiven for his offenses and claims to forgive those who have offended him.

On April 18, 1995, just two weeks after sending his three letters of forgiveness, the Defendant telephoned Mr. Kunin at the Eckankar Temple in Chanhassen, Minnesota. His call was put on a speaker phone and witnessed by Mr. Kunin as well as a Mr. Jack Heyl. The conversation was as follows:

Mr. Kunin: "Hello?"

Defendant: "I've had just about enough of your attacks. This morning, while I was putting on my pants, your man Peddar Zaskq poured filth all over them. I'm having to restrain myself from coming and doing serious damage. If I get my hands on you, I'm going to cut your face open."

The Defendant then disconnected the call before any response could be made.

As with the other incidents, this threat was reported to authorities including the Carver County Sheriff's Department (ICR#95-5803).

On April 24, 1995, less than one week later, the Defendant telephoned again and stated, "One of your members soul-travelled to my home and poured violent energy on my music. Now I've had about enough. Frankly, I think it's about time I took one of you out. You better be ready."

As with the other incidents, this threat was reported to authorities including the Carver County Sheriff's Department (ICR#95-5803). On April 24, 1995, Mr. Kunin was informed by Mr. John R. Payne, of the FBI's Minneapolis, Minnesota branch, that the INS had instituted a "look-out" regarding the Defendant until August 10, 1999.

On July 10, 1995, roughly two and one half months after his last phone call, the Defendant wrote to Mr. Harold Klemp in care of Eckankar's Minneapolis office. In his letter, the Defendant charged that out-of-body slime attacks, allegedly authorized by Mr. Klemp, had resulted in $1500.00 in damage to the Defendant's clothing. The Defendant further claimed that his car was forced off the road by sorcery and filled with slime. He claimed additional damages of $4000.00 for his car.

In closing his letter, the Defendant stated, "The pressure I am under from the members of Eckankar you have sent against me is at a level where I am not responsible. If I flip, I will find you, and I will kill you, your wife, that is your second wife, and your pathetic dog. I would enjoy it. No one would defend you."

As with the other incidents, this threat was reported to authorities.

On September 7, 1995, at 16:55 hours, the most recent threat was made. The Eckankar receptionist, one Delaine Saxby, received a threatening phone call. Ms. Saxby, who

answered the phone with an Eckankar greeting, transcribed the conversation on a computer. She stated that the caller, who spoke with a British accent, made his threat, saying only, "I'm not going to give you my name. I'm being attacked by Harold Klemp on the psychic(?) plane and if it doesn't stop right now, I'm going to start killing people in ECK next week." Then the caller disconnected.

COUNT: 1 of 6
CHARGE: Terroristic Threats
IN VIOLATION OF MINN. STAT. SEC.:609.713, Subd. 1
MAXIMUM PENALTY: Five Years

The above-related facts constitute Complainant's basis for believing that Joseph N. Sykes on or about September 7, 1995, at Chanhassen, in Carver County, Minnesota, threatened, directly or indirectly, to commit any crime of violence with the purpose to terrorize another, or in a reckless disregard of the risk of causing such terror or inconvenience;

COUNT: 2
CHARGE: Terroristic Threats
IN VIOLATION OF MINN. STAT. SEC.:609.713, Subd. 1
MAXIMUM PENALTY: Five Years

The above-related facts constitute Complainant's basis for believing that Joseph N. Sykes on or about July 10, 1995, at Minneapolis, in Hennepin County, Minnesota, threatened, directly or indirectly, to commit any crime of violence with the purpose to terrorize another, or in a reckless disregard of the risk of causing such terror or inconvenience;

COUNT: 3
CHARGE: Terroristic Threats
IN VIOLATION OF MINN. STAT. SEC.:609.713, Subd. 1
MAXIMUM PENALTY: Five Years

The above-related facts constitute Complainant's basis for believing that Joseph N. Sykes on or about April 24, 1995, at Chanhassen, in Carver County, Minnesota, threatened,

directly or indirectly, to commit any crime of violence with the purpose to terrorize another, or in a reckless disregard of the risk of causing such terror or inconvenience;

COUNT: 4
CHARGE: Terroristic Threats
IN VIOLATION OF MINN. STAT. SEC.:609.713, Subd. 1
MAXIMUM PENALTY: Five Years

The above-related facts constitute Complainant's basis for believing that Joseph N. Sykes on or about April 18, 1995, at Chanhassen, in Carver County, Minnesota, threatened, directly or indirectly, to commit any crime of violence with the purpose to terrorize another, or in a reckless disregard of the risk of causing such terror or inconvenience;

COUNT: 5
CHARGE: Terroristic Threats
IN VIOLATION OF MINN. STAT. SEC.:609.713, Subd. 1
MAXIMUM PENALTY: Five Years

The above-related facts constitute Complainant's basis for believing that Joseph N. Sykes on or about July 13, 1994, at Minneapolis, in Hennepin County, Minnesota, threatened, directly or indirectly, to commit any crime of violence with the purpose to terrorize another, or in a reckless disregard of the risk of causing such terror or inconvenience;

COUNT: 6
CHARGE: Terroristic Threats
IN VIOLATION OF MINN. STAT. SEC.:609.713, Subd. 1
MAXIMUM PENALTY: Five Years

The above-related facts constitute Complainant's basis for believing that Joseph N. Sykes on or about April 24, 1994, at Chanhassen, in Carver County, Minnesota, threatened, directly or indirectly, to commit any crime of violence with the purpose to terrorize another, or in a reckless disregard of the risk of causing such terror or inconvenience;

contrary to the statutes in such case made and provided and against the peace and dignity of the State of Minnesota.

THEREFORE, Complainant requests that said Defendant, subject to bail of or conditions of release be:

1) arrested or that other lawful steps be taken to obtain defendant's appearance in court; or
2) detained, if already in custody, pending further proceedings;

and that said defendant otherwise be dealt with according to law.

COMPLAINANT'S NAME:
RON HOLT

COMPLAINANT'S SIGNATURE:

_____
Ron Holt

Being duly authorized to prosecute the offense(s) charged, I hereby approve this Complaint.

Date: September 18, 1995

PROSECUTING ATTORNEY:
PETER IVY

PROSECUTING ATTORNEY'S SIGNATURE:

/s/

Peter Ivy
Assistant Carver County Attorney
Attorney License No. 180956

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF CARVER FIRST JUDICIAL DISTRICT

Joseph N. Sykes	)	
	)	**PETITION FOR**
Petitioner,	)	**POST-CONVICTION RELIEF**
vs.	)	
	)	
State of Minnesota,	)	
	)	File No. K1-95-1415
Respondent.	)	

* * * * * * * * * * * * * * * * * *

TO: The District Court above-named:

Petitioner above-named, by and through his attorney and pursuant to Minn. Stat. §590.01, et seq., represents and states as follows.

I.

Joseph N. Sykes is the petitioner in the above-entitled action. He is presently under jurisdiction of the Court by reason of a judgment and sentence on December 22, 1995.

II.

Petitioner was originally charged by Complaint with six counts of making terroristic threats, contrary to Minn. Stat. §609.713, subd. 1. On December 22, 1995, pursuant to plea negotiations, petitioner pled guilty to Counts II (date of offense: July 10, 1995) and V (date of offense: July 13, 1994) of the Complaint. On the same date, imposition of sentence was stayed on each count; defendant was sentenced to five

years of consecutive probation on each count; conditions of probation required that petitioner have no same or similar violations and that he not return to the United States during the time period of probation.

Petitioner requests that the judgment and conviction and sentence of this Court dated December 22, 1995, be vacated, and that the Complaint be dismissed.

IV.

The facts and grounds upon which this Petition are based are as follows:

1. There is no factual basis for the petitioner's plea of guilty, based upon facts in existence at the time of the plea but not made a part of the record;

2. Petitioner's plea of guilty was involuntary, as set forth specifically in the Affidavit of Joseph N. Sykes attached hereto, and as supported by the Affidavits of Dr. Abraham Nievod, Martin Bowdery and Bruce Hanley, petitioner's trial counsel; and

3. The State of Minnesota did not have jurisdiction over the offenses to which the petitioner pled guilty, as there are no facts giving the state jurisdiction over petitioner's conduct. All grounds for relief known to Petitioner are included in this Petition.

V.

There have been no previous proceedings on behalf of Petitioner to secure relief from the conviction and sentence set forth in this Petition.

VI.

Petitioner will be represented in these proceedings by undersigned counsel.

Dated this 26th day of February, 1997.

Respectfully submitted,

/s/

MARK W. PETERSON
Attorney ID No. 86125
2500 One Financial Plaza
120 South Sixth Street
Minneapolis, MN 55402
(612) 349-5202

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT

State of Minnesota
Plaintiff

File No. K1-95-1415

vs

Joseph Sykes
Defendant

AFFIDAVIT

Sworn by the Defendant on the 12th day of December 1996

I, **JOSEPH NOEL SYKES,** of BM 36, London WC1N 3XX, England, Law student, swear:

A PURPOSE OF AFFIDAVIT

1 The purpose of this affidavit is:

(a) To provide the Court with background as to my involvement with the complaining party;
(b) To explain how I came before this Court;
(c) To explain why my pleas of guilty in the District Court in Carver County, Minnesota, on 22 December 1995 were involuntary;
(d) To explain why I believed and still believe I was innocent of the alleged offenses.

B BACKGROUND TO COMPLAINTS

2 I give below the background to my complaints to the complaining party of 1993-1995. Essentially, I refused in the period September 1992 June 1993 while a member of the complaining party to accept religious training from Harold Klemp, its leader.

3 With regard to the nature of the religious training I refer the Court to key elements in the complaining party's own literature. These elements include: telepathic contact between the leader and members; a unilateral relationship of influence between the leader and members, extending to mind control; and express or implied threats to members by the leader that they will suffer destructive experiences if they leave the group or do not accept the leader's influence and mind control. I refer briefly to each of these elements, illustrating them from the complaining party's literature:

(a) Telepathic contact: the leader of the complaining party, Harold Klemp, is described in the literature as having the ability to in effect communicate telepathically (from mind to mind) with members. Typically, the member believes he sees Mr Klemp in front of him, in a "spiritual form", and hears him speak, in his home or workplace. Such experiences by members are widely documented in the literature, particularly in the "Eckankar Journal", an annual publication of members' telepathic experiences with Mr Klemp (copies of which are available from the complaining party), and in "In the Company of Eck Masters" by Phil Morimitsu (Exhibit 'A', attached). Mr Morimitsu states in his book that Mr Klemp's "inner form" is always with him (at page ix). He describes Mr Klemp appearing to him in his living

room and talking to him in every chapter, for example at pages 33 - 34.

(b) A unilateral relationship of influence extending to mind control: Mr Klemp's influence over his members is described in the literature as in effect enabling him to control their mental experience and establish mind control over them. This includes his generation of terrifying sensory experiences in the member's mind. Mr Morimitsu describes this in detail in chapter 34 of his book, and in particular on pages 279 - 281. Mr Klemp's account of his own training to be leader of the group, "Child in the Wilderness" (Exhibit 'B', attached), describes such mind control leading to mental disorder. He ascribes these experiences to the founder of the group and leader at the time, Paul Twitchell. In one incident, after a "religious experience", Mr Klemp throws himself into an icy river; he then experiences a "frightening presence" enter his room, which he believes to be "the Angel of Death" (at pages 149 - 150). A few pages later Mr Klemp describes the effect of the religious experience on his mind as "chaos" (at page 169). Soon after he undresses in an airport terminal and is arrested (at page 172). He is sentenced to confinement in a mental hospital (at pages 189 - 190). In the hospital Mr Klemp believes three "spirits" attack him (at pages 195 - 198);

(c) An express or implied threat by the leader of destructive experiences: Mr Twitchell stated in his books that a member should not leave the group. In "The Manu Samhita: the Code of Ethics", for example, (a pamphlet published by Eckankar in Mr Twitchell's style and which is believed to be his work) it is stated that if a member leaves the group "he will generally meet with greater hardship" and

that "he brings spiritual injury to himself" (Exhibit 'C', attached). The existence of destructive experiences in the complaining party has been confirmed by Mr Twitchell's successors, Darwin Gross and Mr Klemp. In 1993, Mr Klemp published an article called "Methods of the Black Magician" in the Winter edition of "The Mystic World", a members' publication. In the article (quoted in "The Making of a Spiritual Movement: the untold story of Paul Twitchell and Eckankar", an academic analysis by David Lane, Exhibit D, attached) Mr Klemp describes the use of "terror" against individuals by black magicians. Mr Klemp states (at page 134) that the black magician has "power to invade dreams": "he can bring terror through nightmares. ... Monsters appear, forces tear at the Astral body [sic] and strange, awful phenomena confront him". Mr Klemp claims (at page 135) that he can help members "combat the dark force". However Mr Gross later alleged in an open letter to members (reproduced in "The Making of a Spiritual Movement", Exhibit D, attached) that Mr Klemp's focus on black magic in publications to members was, in fact, to incite them to use it. Mr Gross alleged hat Mr Klemp had added instructions about "dark arts" in his rewrite of a Twitchell book "Letters to Gail III" (at pages 5-7). (The book was withdrawn from distribution in 1993 after allegations that members were using the techniques of black magic described in it against each other). Mr Gross also alleged that he had received death threats and other threats from the group (at pages 8 - 9) that terrorised him. From these documents, detail aside, the existence of destructive experiences in the complaining party is plain.

4 I had been a member of the organisation continuously from or about February 1980. Prior to the period September 1992 to June 1993 I was rising in the complaining party's ranks:

(a) I was invited to edit the organisation's newsletter "The Golden Vessel" in England in late 1991 (copies of which are possessed by the complaining party) by the leader of the organisation in England, Robert Sanderson, and organised and edited the newsletter in 1991 and 1992;

(b) I was invited to design and take workshops on writing for the organisation at seminars in Minneapolis and other cities in the United States in 1991 by a leading member of the organisation, Mary Carroll Moore, and I took workshops and gave a talk at seminars of the organisation in April, June, July and October 1992 (evidence of which can be obtained from the complaining party);

(c) I was invited to plan and present a writer's group in England by a leading member of the organisation in England, and did so in 1991 - 92;

(d) I was invited to design and present a national seminar in England in March 1993 by Robert Sanderson, and did so in Ealing, London. The seminar attracted almost the entire membership of the organisation in England (evidence of which is possessed by the complaining party);

(e) I was invited to present workshops at a seminar in the United States in June 1993 by Mary Carroll Moore (evidence of which is possessed by the complaining party);

(f) I was in regular contact with the complaining party's counsel and secretary, Douglas Kunin, from October

1991 to October 1992 by letter, telephone conversation and appointment at seminars of the organisation in October 1991 and April, June, July and October 1992, with reference to writing a screenplay based on one of the organisation's books "The Three Masks of Gaba". We exchanged ideas on screenplay rights and payment. Mr Kunin suggested I telephone an entertainment lawyer in Los Angeles at the expense of the organisation, and sent the me a contract for writing the screenplay. I sent Mr Kunin a draft outline of the screenplay between June and October 1992 (copies of the correspondence are possessed by the complaining party);

(g) Mr Kunin told me at an appointment at a seminar in Minneapolis in October 1992, that Mr Klemp and his wife were keen for me to write the screenplay;

(h) Mr Kunin told me at the seminar that I was "Our man in London".

5 My communications with Mr Kunin and with other senior officers of the organisation were friendly from June 1991 to June 1993.

6 Prior to September 1992 I therefore had no reason to write complaining letters.

7 In the period October 1991 to September 1992 Mr Klemp used the telepathic skills described above to appear to me on many occasions in my apartment in London, England. Mr Klemp told me I had to become adept at "soul travel". This involved my engaging in "out-of-body-travel". I hesitated because I did not trust him. Although I stayed in the complaining party, I did not like the frequent allegations between members of black magic and "psychic attacks". Mr Klemp told me that I had follow

his wishes. I hesitated. Mr Klemp was extremely angry at my hesitation.

8 In September 1992 Mr Klemp began a campaign of terrification through telepathy or mind control. It corresponded to the elements outlined above. I described its main points in a letter to the Charity Commission in London of 17 September 1993 (Exhibit 'E', attached). These included:

(a) Sleep deprivation, through the use of artificial sounds at night;
(b) Food deprivation, through the constant direction of pressure onto my stomach, with no medical cause, making eating unattractive and difficult;
(c) The appearance of convincing illusions, including demonic creatures.

9 At the beginning of June 1993 a member of the organisation in London, England, one Ebenezer Egunjobi, visited me at my home in Ealing, London. Mr Egunjobi told me that he was "a black magician". Mr Egunjobi threatened that if I left the organisation "You will meet with a quick death".

10 I left the complaining party at the beginning of June 1993 in a state of physical collapse.

11 On 17 June, 23 June, and 29 June 1993 I wrote letters to Mr Kunin and members of the organisation at the Minneapolis head offices and in England, describing Mr Klemp's training me by telepathy (Exhibit 'F', attached). In those letters I, extremely upset by the training, described Mr Klemp incorrectly as "Peddar Zaskq", the name Mr Twitchell claimed in his books was his "spiritual name", and a persona occasionally adopted by Mr Klemp in his training of members.

12 From June 1993 the organisation campaigned against me. The complaining party circulated a story in June and July 1993 that I had become mentally ill. For the sake of the record, I saw an experienced psychiatrist in September 1993, who stated I was completely sane, and had an exceptionally clear mind (Exhibit 'G', attached).

13 Mr Klemp's use of mind control continued in 1994 and 1995. My doctor and pastor noted the telepathic harassment from the complaining party in that period and recently confirmed their observations in letters (Exhibits 'H' and 'I', attached). I became a Christian formally, and the power of his attacks gradually fell off. By late 1995, he seemed to have given up on me.

14 Affidavits in support of this affidavit and particularly my allegation that the complaining party uses mind control against members and ex-members from Dr Abraham Nievod (Exhibit 'J').

C CHRONOLOGY OF EVENTS PRIOR TO PLEAS

15 On or about 5 December 1995 the British Consul in Los Angeles, Ann Morton, told me, in a conversation at Los Angeles County Jail, that Assistant County Attorney Ivy had told her on the telephone that he wanted me to "face charges" and then be "deported".

16 The British Consul was unclear what Mr Ivy had meant by "face charges". She thought that it could mean Mr Ivy intended trial, conviction, and a jail or prison sentence.

17 At the bail hearing in the District Court in Carver County on 19 December 1995 Assistant County Attorney Tracy Sheehan:

(a) Requested bail of $2,000,000;

(b) Supported her request by repeating to the Court (at page 10) false allegations made against me by the

complaining party: "The English authorities are well aware of Mr Sykes (sic) background and also aware of his -- both possession of weapons and his training in the use of them".

18 In making these allegations I believe Ms Sheehan was referring to the allegations made against me by Mr Kunin of the complaining party in letters he wrote to law enforcement authorities including his letter of 14 January 1994 and which Mr Kunin copied to Carver County Sheriff's Department (available in the Court file). In that letter Mr Kunin wrote (at page 1):

(a) "British police and social service workers had been in contact with Mr Sykes during the past year in regard to other threatening statements made by Mr Sykes";
(b) "He advised a friend that he had joined a gun club with the intent to 'trap and shoot a few ECKists' (members of Eckankar)";
(c) "Mr Sykes is a suspect for an incident of vandalism committed on the residence of Eckankar members in England";
(d) "The law enforcement agency currently investigating the matter in England is Adrian Wort, Technical Investigator, Shepherd's Bush Police Station".

19 The first allegation of Mr Kunin is false. Firstly, the only contact I received from the "British police" was a brief meeting in or about July 1993 at my home with detectives from Ealing police station, London, England. The meeting followed false allegations made in or about July 1993 by one Ebenezer Egunjobi, a member of the complaining party, to Ealing police following my resignation from the complaining party in June 1993.

The detectives dismissed the matter after talking with me. I had no contact with "social service workers", and I had not made threatening statements to any party at that time.

20 Mr Kunin's second allegation is false. He repeated Mr Egunjobi's false allegation, with no evidence. I joined no "gun club" nor did I advise such. I had no intention of "trapping and shooting" members of the complaining party.

21 The third allegation is also false. Members of the complaining party reported vandalism on January 1994 to Shepherds Bush police station, London, England, and alleged that I was a suspect. However, they had no evidence for their allegation, and told the police station they did want to pursue the matter. I never became a suspect in that incident of alleged vandalism.

22 The fourth allegation of Mr Kunin is false. There was no investigation of me in relation to the incident of vandalism of January 1994, as the members who made the allegation stated they did not want to pursue the allegation.

23 Ms Sheehan also stated to the Court in support of her request for bail that I had threatened "death" (page 10). This allegation is without factual support and is untrue.

24 The "English authorities" to which Ms Sheehan referred, a police station in Shepherds Bush, London, England, have since confirmed that (Exhibit 'L', attached) the station received a complaint about vandalism from a member of the complaining party who alleged that I might be a suspect. There was no evidence and the complainant told the police station he did not want to pursue the matter. Later, Mr Kunin at the headquarters of the complaining party contacted the police station and insisted the police station act. The station tried only briefly to find me, and did not even write to me. I had no criminal record. The "English authorities" were therefore

not "aware of" (at page 10) my background since I had no police background.

25 The "English authorities" were also not aware of my possessing weapons or being trained in the use of them. I have never possessed a weapon, and I have not been trained in the use of a weapon.

26 Although I realise my impression was subjective, Ms Sheehan's requesting a high bail by consciously or unconsciously making false allegations to the Court and thereby misleading the Court frightened me.

27 Although I realise my impression of Ms Sheehan's attitude to me was subjective, I believe that when she first looked at me in the courtroom, she looked at me with an obvious hatred I could not explain. I wondered if I had seen her before, and if she was or had been a member of the complaining party, of which I had been a member for 14 years. On each occasion that she looked at me I believe it was with the same, obvious hatred. I wondered if the complaining party had influence in the County Attorney's office. (I later learned that Ms Sheehan worked in that office only in the approximate period from the issuing of the complaint against me in September 1995 to shortly after the hearing on 22 December 1995). I was concerned that the County Attorney's office might to some degree be biased in my case.

28 The Court initially set bail at $200,000, but following Ms Sheehan's allegations set bail at $500,000 (at page 11), which frightened me further.

29 As a result of the bail hearing it seemed to me that by "face charges" the Assistant County Attorney had intended trial and a prison sentence, after which he would want to deport me, as the British Consul in Los Angeles, Ann Morton, had thought he might intend.

30 I realised in these circumstances that I needed an experienced defence attorney. I felt I could not rely on a

free Court appointee, who might be inexperienced. I therefore took the following actions:

(a) I telephoned several attorneys, but I did not find one who grasped the case;
(b) I telephoned my family in England and asked them to ring the Cult Awareness Network (CAN) in Chicago for a recommendation;
(c) CAN recommended Mr Joseph Marshall of Marshall & Associates, who had experience defending individuals against cults in Minneapolis. Mr Marshall recommended Mr Bruce Hanley as an experienced defence attorney; and
(d) Mr Hanley agreed to act at the arraignment hearing of 22 December 1995 if he was paid first, following procedure in such cases.

31 I telephoned England for two days, including at night, to find a friend who would pay for Mr Hanley. My family told me that friends contacted a friend of mine who is a trial lawyer, Mr Martin Bowdery.

32 Mr Bowdery telephoned me on 20 December 1995 and told me he would pay for Mr Hanley on one condition: I must agree to any plea bargain that Mr Hanley achieved, including a plea of guilty. I refused at first, but he was determined. Finally, considering the events at the bail hearing referred to above, I agreed.

33 Mr Bowdery sent a fax to Mr Hanley on 21 December 1995 (Exhibit 'M', attached) in which Mr Bowdery:

(a) Agreed to instruct Mr Hanley and pay him a retainer, so that Mr Hanley would be retained to represent me at the hearing of 22 December 1995;
(b) Informed Mr Hanley that he had told me I must "cut a deal with the Prosecution" and "admit any

charges", provided the prosecutor agree to deport me forthwith;

(c) Requested of Mr Hanley that he "ensure such a deal is cut".

34 Mr Bowdery made it clear in his fax of 21 December 1995 to Mr Hanley that he was instructing Mr Hanley, and that he expected Mr Hanley to agree a plea bargain that would produce my immediate release, one including pleas of guilty.

35 Mr Bowdery, in agreeing to provide me with legal representation, thus pressured, for the best of motives, myself and Mr Hanley into a plea bargain including pleas of guilty.

36 The "deal" that Mr Bowdery described formed the basis of the plea bargain agreed between the Assistant County Attorney and Mr Hanley. Mr Bowdery discusses his knowledge of these facts in his attached affidavit (Exhibit 'N').

37 On 22 December 1995, before the hearing, Mr Hanley told me the plea bargain was two felony counts, ten years' probation in the form of not being allowed to return to the US, and departure to England that day. He made it clear that if I refused, the County Attorney would not be bound by it in the future.

D PLEAS INVOLUNTARY

38 On 22 December 1995 I pled guilty to two counts of Terroristic Threats in the District Court in Carver County pursuant to a plea bargain.

39 The pleas were involuntary, for a number of pressing reasons.

40 The primary reasons were, firstly, that the County Attorney was prepared to use information that was false,

and which that office had not apparently checked. I was frightened by the reliance of the County Attorney on false information about me provided by the complaining party at the bail hearing on 19 December 1995 in the District Court in Carver County, to request a bail of $2,000,000 and achieve a bail of $500,000.

41 My second primary reason for pleading guilty was therefore that the County Attorney seemed to me to want to seek severe penalties, and to that end to be prepared to use unverified information.

42 The third primary reason for my pleading guilty was that I realised I needed an experienced defence attorney but that attorney was only provided for me by a friend on the basis that I agreed to any plea bargain he achieved with the County Attorney, including any plea of guilty.

43 The fourth primary reason for my pleading guilty was that my attorney told me that if I did not accept the County Attorney's plea bargain, the County Attorney would seek penalties including imprisonment at trial.

44 The fifth primary reason for my pleading guilty was that having agreed to agree to my attorney's plea bargain, I therefore had to agree to sign a petition of guilt and make admissions in Court that I did not agree with.

45 I had secondary reasons for agreeing to the plea bargain:

(a) I had never been in jail before, and was unprepared for it;

(b) I was still in a state of shock at being jailed for the previous three weeks, and in what I had thought was a private religious conflict being treated as a criminal matter;

(c) I did not regard myself as a criminal, having no criminal record;

(d) I had been through a nightmarish and degrading week in the Los Angeles County Jail, a degrading

week handcuffed and chained to drug addicts and a murderer in a transport van, and a further week in Carver County jail;

(e) My family wanted me home for Christmas, and if I accepted the plea bargain I would be home for Christmas.

46 Further evidence for my pleas being forced and involuntary was the fact that as a result of the plea bargain I was not able to present to the Court either personally or through my lawyer Bruce Hanley my prepared Motion to Dismiss (Exhibit 'O', attached) the charges on jurisdictional grounds. I believed the state had no jurisdictional basis to hear the case as I had not made a telephone call or written a letter to the complaining party in the United States. The County Attorney was certainly aware from the bail hearing (at page 7, lines 18-25, at page 8, lines 1-25, and at page 9, lines 1-11) of my wish to argue against the state's jurisdiction in the matter. The Court at that hearing pointed out (at page 9, lines 12-15) that I would have an opportunity at the arraignment on 22 December 1995 to present such a motion.

47 Between 19 and 22 December 1995 I revised my Motion to Dismiss for lack of jurisdiction. I made several copies for the hearing of 22 December 1995 and had them ready on the day. The pressures on me to plead guilty by the hearing were however sufficiently intense for me to agree to the plea bargain. At the same time, I remained firmly of the view that the state had no jurisdiction in the matter, and that a judicial wrong was being committed. The County Attorney's plea bargain prevented me raising and arguing the issue personally or through my lawyer at the arraignment hearing on 22 December 1995.

48 I therefore had no choice but to plead guilty and answer questions in in a way that would support my plea.

49 I was put in a position in which I believed I had to plead guilty, when I believed I was not guilty of the offences. I believe this was unfair, unjust, and a violation of my rights.

E ADMISSIONS IN HEARING

50 I therefore made involuntary admissions in the hearing that supported my plea of guilty. I refer to each in turn.

51 At page 10, lines 11-14: Mr Hanley asked me, "On July 10, 1995, did you send a letter to Eckankar's Minneapolis office?" I replied, "Yes".

52 At page 10, lines 15-17: Mr Hanley asked me, "And that letter -- you understand that that letter may cause fear in the mind of someone receiving that letter?" I replied, "Yes. I understand that that letter may cause fear in the mind of someone receiving that letter". In making this statement, I answered in a way that would support my plea pursuant to the plea bargain. I did not admit that I sent the letter to cause fear, or that I thought it would cause fear. It might have caused fear in that it might have caused any reaction, as a logical proposition, but in reality I did not expect the letter to cause fear. I sent the letter to stop the complaining party using what I would call harassment by telepathy and intentional infliction of emotional distress (which I detail below). The culture of the complaining party is, in my experience of it in 14 years from February 1980 to June 1993, anti-emotional. I regard the complaining party as entirely ruthless and unlikely to react out of fear. The reaction I expected was unemotional: either to continue the harassment, or to stop it. In other words, I hoped to make it clear to the group

that they should not think they had any further claim to me. I wrote for that reason.

53 At page 10, lines 18-22: Mr Hanley asked me, "And you understand that -- that letter was sent really with a reckless disregard of the possibility or the right -- the risk of causing such terror or inconvenience to somebody?" I replied, "Yup, I do". In making this statement, again, I answered in a way that would support my plea pursuant to the plea bargain. I did not in reality send the letter with a reckless disregard of causing terror or inconvenience, for the reasons I have given above (at paragraph 52). I knew the individual in the complaining party to whom I wrote well enough to know he would not experience any such emotion, but would examine and decide on the matter neutrally.

54 At page 10, lines 23-25, and at page 11, line 1: Mr Hanley asked me, "That was not sent from anywhere in Minnesota, right? It was sent from somewhere outside of the United States, wasn't it?" I replied, "The letter was sent from England". In making this statement, I had in mind:

(a) My written motion to dismiss for lack of jurisdiction that I wished to bring at the bail hearing on 19 December 1995 and which I mentioned to Mr Hanley before the hearing of 22 December 1995; and

(b) My appeal of the convictions to which I had agreed in the plea bargain that I had planned, and which I discussed with Mr Hanley a few minutes after the hearing of 22 December 1995.

55 At page 11, lines 2-4: Mr Hanley asked me, "And it came in here, but you knew that it would have some effects on whoever received it when it came?" I replied, "I suspected it would. Yes." My answer was again

involuntary: I answered in a way that would support my plea pursuant to the plea bargain. The only effect I expected was, as I have detailed above (at paragraphs 52-53), that the complaining party would either continue or cease its telepathic harassment of me.

56 At page 11, lines 5-11: Mr Hanley asked me, "Now also then, on July 13, 1994, did you make a phone call to Eckankar offices in Minneapolis?" I replied, "Yes, I did". Mr Hanley further asked me, "And did you indicate, leave a message and indicate your name being Joe Sykes, that you were directing a message for Doug Kunin?" These admissions were true, and indicated that I wish to speak to and then leave a message for a definite person in the complaining party, Mr Douglas Kunin, an employee. There were a number of reasons:

(a) I knew Mr Kunin well in his capacity as counsel for the complaining party. We had a friendly relationship from approximately June 1991 - June 1993. We met, corresponded and had telephone conversations several times a year in that period, with reference to my various voluntary activities for the complaining party;

(b) I left a message for Mr Kunin because he is close to Mr Klemp, the leader of the complaining party, and I hoped the message would get to Mr Klemp who I could not contact by telephone;

(c) I did not expect Mr Kunin to react emotionally;

(d) On a prior occasion, I telephoned Mr Kunin and asked him to ask Mr Klemp in serious terms to leave me alone. Mr Kunin told me he was taping the conversation. Mr Kunin denied my complaint, unemotionally. His attitude was cold and factual; he did not commit himself to any action. However, he did not refuse to speak to Mr Klemp; and

(e) I believed the frustrated nature of my message would tell Mr Kunin and Mr Klemp that there was no point in trying to get me back into the organisation of the complaining party.

57 At page 11, lines 12-19: Mr Hanley asked me, "And you understand that what you said in that message, that that may cause fear in Mr Kunin, or in someone elsee?" and then, "And that was done basically with a disregard -- a reckless disregard of the risk of causing such terror or inconvenience to Mr Kunin or someone else?" I replied "Yes, I do" and "Yes" to these questions. My answers were again involuntary: they were the answers that pursuant to the plea bargain would support my plea. I did not expect to cause fear, nor did I have a reckless disregard of causing terror or inconvenience to Mr Kunin, for the reasons I have given above (at paragraphs 52, 53 and 56).

58 At page 11, lines 20-22: Mr Hanley asked me, "And that again, that call was made from outside of the United States to the Unites States?". I replied, "Yes, it was". In making this statement, I was still mindful of my belief that Minnesota had no jurisdiction over my actions (as I have referred to above at paragraph 54).

59 At page 11, lines 23-25 and at page 12, line 1: Mr Hanley asked, "But irrespective of where the call was made from, you knew that it would have some effect on the person receiving the call in the United States". I replied, I suspected that it would. Yes". Again, I answered in a way that would support my plea pursuant to the plea bargain. The only effect I expected was that the complaining party would either continue or cease its telepathic harassment of me, as I have detailed above (at paragraphs 52 and 55).

60 At page 12, lines 17-21: Mr Hanley asked, "Just for jurisdictional. The calls -- the calls, when we talked about the Eckankar offices, the offices were located, the call and the letter were addressed to some place in Carver County in Chanhassen?" I replied, "They were". My admission simply helped to establish the fact that I had telephoned and written to Eckankar offices in Minneapolis. It did not establish jurisdiction for the state in the matter, as the telephone call was not made in and the letter was not sent in Minnesota or in the United States.

61 At page 14, lines 3-24: the Court asked, "Did you understand what we were saying, Mr Sykes?" having discussed (on page 13) the address of the complaining party. I replied, "Well, yes, I do. You are dealing with the fact that Eckankar has two main offices in two different places. But the letter was -- the letter that's being referred to was really directed towards the people working in the temple at Chanhassen. It's --". The Court asked further, "But it was mailed to Minneapolis in Hennepin County". I replied, "Well, yes. They have a mail system whereby-- mail intended for the temple institution may be received first at the other institution in Hennepin, then be transferred to the institution in Carver County." Mr Hanley asked further, "So then, Mr Sykes, basically even though the letter was postmarked, addressed to Minneapolis, you knew it would get to, ultimately, the Carver County location?" I replied, "That was the purpose". These statements indicated my knowledge of the complaining party's organisation. After 14 years as a member of the organisation, in which I had good relationships with many members at the Minneapolis and Chanhassen offices, including Mr Kunin who spoke in the hearing (at pages 4 and 13), and in which I made several visits to the organisation's offices,

and had a large number of meetings, correspondence and telephone calls with members in the period June 1991 - June 1993, this was natural. The admissions did not provide evidence for my intentions in writing to the organisation, or for the state's jurisdiction, for the reasons I have stated above (at paragraphs 52, 55 and 60).

62 At page 16, lines 6-11: the Court asked, "Mr Sykes, is there anything you wish to say before the disposition in this matter?" I replied, "Well, simply that I wish to apologize for any trouble that's been caused in the area, and that there will be no repetition in the future". My apology stands. It was an apology to the authorities for becoming involved in a religious conflict with the complaining party. My intention was for the complaining party to leave me in peace. I did not wish, and did not expect, the authorities to be involved. Equally, my determination from the date of the hearing not to place myself in a position where I could be accused of such offenses stands.

63 My statements at the hearing were forced and involuntary, and I made them for the purpose of having my pleas accepted. They did not reflect either my intentions or relevant facts and circumstances.

64 After the hearing, I asked Mr Hanley about appeal. I believed I was innocent of the offenses charged, and wanted the convictions vacated. Mr Hanley said he would pass the file to Mr Marshall for that step. I contacted Mr Marshall immediately and then several times in January 1996. He took no steps in two months, as a result of other work, and finally told me he was in practice too busy to take the case at the time. I then engaged my present counsel, Mr Peterson. From the beginning, I asked Mr Peterson to challenge the convictions as I did not believe I was guilty.

F BELIEF IN MY INNOCENCE

65 At the time of the hearing on 22 December 1995 I felt strongly that I was not guilty of the offence of Terroristic Threats.

66 The offences as read out to me were that I had threatened to directly or indirectly commit a crime of violence with a purpose to terrorize another, or in a reckless disregard of the risk of causing such terror or inconvenience.

67 An examination of the evidence put forward by the complaining party shows that the alleged communications were attempts to *prevent* terrorization. The communications were primarily *complaints*. Any element of threat was secondary.

68 The evidence in the Complaint on file supporting the offences charged in counts 2 and 5 clearly involved my complaints.

69 With reference to count 5:

(a) Count 5 referred to a telephone message on 13 July 1994. In the message there was a complaint of victimisation by "severe black witchcraft";

(b) After that complaint that there was a threat, clearly in language of a person who was very upset, "I intend to go to America within the next few weeks to murder as many Eckists as I can";

(c) The message lastly promised to inform the FBI, police and media of the complaining party's "witchcraft methods";

(d) There is no evidence of means to carry out any threat, or of a well-conceived plan.

70 With reference to count 2:

(a) Count 2 referred to a letter of 10 July 1995. The letter first complains of:

(i) "Out-of-body slime attacks";
(ii) Damage to clothing and a car; and
(iii) Pressure "from the members of Eckankar".

(b) A threat is added, and refers as in count 5 to a possibility, not a plan;
(c) The threat, again in language of a person obviously upset, was "If I flip, I will find you and kill you". This is obviously a statement of what might occur if the pressure from the complaining party became too great;
(d) There was no evidence of means or a plan of any kind.

71 There was therefore no evidence of any means, or plan, or intention by myself to carry out any threat in the communications.

72 The communications referenced in counts 2 and 5 were primarily complaints, reflecting my distress and despair. These communications were not attempts to terrorize but reflected my state of being terrorized. They were desperate attempts to stop the complaining party from terrorizing me. Far from being a terrorizer, I felt that I was the complaining party's victim.

73 At the same time, I had no reckless disregard of the risk of causing terror. I did not think any communications from me would cause terror. I thought the complaining party might give up on me, specifically from trying to get me back into the religion. I thought the revelations of what they were doing, contrary to their public image, would lead them to give up any further interest in me. I

hoped they would be discouraged, and decide to not to pursue me any further.

74 My purpose therefore was not to terrorize. I did not recklessly disregard the risk of causing terror. I did not expect to terrorize. My purpose was to stop the complaining party's terrorization of me by making complaints that I hoped would discourage them. Any perceived threat that I added was to emphasise my complaint.

75 Further, letters written by Mr Kunin of the complaining party to law enforcement authorities in 1994 and 1995 (as available in the Court file) showed no evidence of terrorisation:

(a) There were no descriptions in the letters of terror of any kind by any member of the complaining party;
(b) Despite the purported concern of the complaining party, there was no evidence that the complaining party was in reality concerned about my telephone call or letter;
(c) There is no evidence that the complaining party requested or employed additional police or private security at seminars or buildings of the organisation or private residences of members of the organisation;
(d) The tone of the letters was one of assured confidence.

76 The complaining party clearly wished to prosecute me, but there is no evidence it was as a result of terror or any such emotion. The false allegations made in Mr Kunin's letter of 14 January 1994 (in the Court file), which formed the basis for Ms Sheehan's false allegations at the bail hearing of 19 December 1994 (at page 10), indicate, quite differently, a desire to defame and maliciously to prosecute me.

G LACK OF JURISDICTION

77 I also believed at the hearing that Minnesota did not have jurisdiction in the case, as none of the alleged communications were made in Minnesota, or in fact the United States.

78 I understood from reading the Criminal Code of Minnesota while in Carver County jail that the state did not have jurisdiction in my case. I had been charged under section 609.713, but I had not broken it. Each of the counts said I had acted "at" a location in Minnesota. Counts 2 and 5 referred to Minneapolis, count 5 amended by the Court to Chaska. I was not in these places on the relevant dates. No-one acted for me in those places on those dates.

79 Mr Hanley told me Mr Ivy was relying on my having caused "effects" in Minnesota. Section 609.713 refers however not to effects but to causes. I was alleged to have made threats to terrorize. There was no allegation that someone was terrorized, and the section does not provide for it. The subject of the section is clearly the act and the intention of the actor. I also understood from my reading of the criminal code that while there was a section on jurisdiction that gave the state jurisdiction to prosecute any offence in Minnesota, the state had not cited in its complaint any section under that jurisdiction describing an offence that I had allegedly committed other than section 609.713, which did not allow for "effects". Furthermore, I had not committed any offence referred to in section 609.713 while in the state of Minnesota. Even if the state had charged me with a section appropriate to the alleged offences, it would not have been relevant.

80 In my answers to Mr Hanley on jurisdiction (at pages 10 and 11 of the transcript) I stated that the letter was sent and the telephone call was made from outside the US.

81 I believed then and continue to believe that the state had no jurisdiction over my actions. I prepared a Motion to Dismiss on jurisdictional grounds (Exhibit 'O', as referred to above at paragraph 46), to which the Court referred at the bail hearing (at page 9), and gave it to Mr Hanley before the hearing of 22 December 1995.

82 That your Affiant further sayeth not.

/s/_____
Joseph N. Sykes

Subscribed and sworn to before me
this 12 day of December, 1996.

/s/ E. Ajai-Ajagbe_____
Solicitor

Subscribed and sworn to under oath

AJAI-AJAGBE SOLICITORS
SOUTHBANK HOUSE
BLACK PRINCE ROAD
ALBERT EMBANKMENT
LONDON SE1 7SJ
DX 33258 KENNINGTON

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF CARVER FIRST JUDICIAL DISTRICT

Joseph N. Sykes, File No. K1-95-1415

Petitioner,

v. **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

State of Minnesota,

Respondent.

This matter came before the Honorable Robert J. Goggins, Judge of the District Court, on June 16, 1997 on Petitioner's motion for post-conviction relief, at the Carver County Courthouse, Chaska, Minnesota. Petitioner seeks to withdraw the guilty pleas he entered on December 22, 1995.

Petitioner was represented by Mark W. Peterson. Peter Ivy appeared on behalf of the State of Minnesota.

The Court having heard the evidence adduced on the part of the Petitioner and Respondent, and upon all files, records and proceedings herein and the Court being fully advised in the premises, now makes the following:

FINDINGS OF FACT

I.

Petitioner was a member of the Eckankar church from February 1980 until June 1993.

II.

After Petitioner ended his 14-year membership with Eckankar, the Eckankar Temple allegedly received threatening phone calls and letters from the Petitioner.

III.

Petitioner was originally charged by Complaint with six counts of making terroristic threats, contrary to Minn. Stat. § 609.713, subd. 1.

IV.

On December 22, 1995, Petitioner pled guilty to Counts II and V of the Complaint. Count II charges the commission of terroristic threats on July 10, 1995, by Petitioner's writing a letter to the leader of Eckankar at its Minnesota office. Count V charges the commission of terroristic threats on July 13, 1994 based upon a telephone message Petitioner left on Eckankar's answering machine in Minnesota. Imposition of sentence was stayed on each count, defendant was sentenced to five years of consecutive probation on each count, conditions of probation required that Petitioner have no same or similar violations and that he not return to the United States during the time period of probation.

V.

Petitioner was represented by counsel, Bruce Hanley, Esq. when the guilty pleas were entered. The court and counsel advised, and Petitioner was aware of his right to trial and of the possible consequences of his conviction. Petitioner stated on the record that he understood his rights and the consequences of his actions, and that he had consulted with

counsel. The Court also questioned the Petitioner and determined that there was a valid factual basis for the plea. See Plea Transcript at 6-12.

VI.

Petitioner requests that the judgment and conviction and the sentence of this Court dated December 22, 1995, be vacated and that the Complaint be dismissed, based on three grounds:

1. That there is no factual basis for the Petitioner's plea of guilty, based upon the facts in existence at the time of the plea but not made a part of the record;

2. That Petitioner's guilty plea was involuntary, as set forth in the Affidavit of Joseph N. Sykes and as supported by the Affidavits of Dr. Abraham Nievod, Martin Bowdery and Bruce Hanley, Petitioner's trial counsel; and

3. The State of Minnesota did not have jurisdiction over the offenses to which the Petitioner pled guilty, as there are no facts giving the state jurisdiction over Petitioner's conduct.

CONCLUSIONS OF LAW

1. There was an adequate factual basis for Petitioner's guilty plea.

2. The Petitioner knowingly and voluntarily waived his right to trial after consulting with private counsel.

3. The State of Minnesota has jurisdiction over the offenses to which the Petitioner pled guilty.

ORDER

1. The petition for post conviction relief is denied.

2. All other motions not specifically granted are hereby denied.

3. The attached memorandum is incorporated by reference.

Dated: August 19, 1997 /s/

Hon. Robert J. Goggins
Judge of the District Court

MEMORANDUM

To be valid, a guilty plea must meet three basic requirements: 1) it must be accurate; 2) it must be voluntary; and 3) it must be intelligent (i.e., knowingly and understandingly made). State v. Trott, 338 N.W.2d 248, 251 (Minn. 1983). The purpose of the voluntariness requirement is to ensure that a defendant does not plead guilty because of improper pressures or inducements. Id.

The Minnesota Rules of Criminal Procedure allow a court to withdraw a guilty plea upon a timely motion where the defendant can prove to the court that a withdrawal is "necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice occurs if a guilty plea is not accurate, voluntary, and intelligent, and thus the plea may be withdrawn. State v. Ecker, 524 N.W.2d 712, 716 (Minn. 1994) (holding that no manifest injustice occurred when defendant's plea had a sufficient factual basis).

Minn. R. Crim. P. 1505 allows postsentence withdrawal of a plea only if the motion to withdraw is timely. Mr. Sykes' petition for post-conviction relief was made over 13 months after the entry of judgment, and thus was not made in a timely manner. See State v. Lopez, 379 N.W.2d 633, 636 (Minn. App. 1986) (holding that a motion to withdraw a guilty plea

was not timely where made more than 11 months after sentencing).

Petitioner's plea was knowing and voluntary, based upon the record and the surrounding circumstances of the plea. His attorney, Bruce Hanley, discussed the plea offer with him, and also discussed the criminal procedure and timing involved in challenging the State's case. Aff. of Bruce H. Hanley, ¶¶ 5-7. This raises the presumption that Petitioner was informed of his rights adequately before he entered into the guilty plea. See Doughman v. State, 351 N.W.2d 671, 674 (Minn. App. 1984). There are no facts to indicate that Petitioner pled guilty because of any ignorance of the law or facts, or that he was falsely induced to plead guilty through coercion or threats. He had the effective representation of counsel throughout the proceedings.

Although some of the circumstances in this case appear bizarre, the defendant, in the opinion of the Court, weighed his options intelligently and entered a knowing and voluntary plea.

Finally, the State of Minnesota does have jurisdiction over Petitioner's conduct. Under Minn. Stat. § 609.025, subd. (3), the State may convict and sentence anyone who, "being without the state, intentionally causes a result within the state prohibited by the criminal laws of this state." As the phone calls were made to and the letters sent to Minnesota, the State may exercise jurisdiction over this matter.

R.J.G.